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03/27/2008

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8 January 2008 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Hashimoto fails to disclose the composition being stored in the diaper prior to excretion of fecal waste by a wearer, it is noted that the article of Hashimoto is intended to be worn during subsequent excretions of fecal matter by the wearer. Therefore the compositions provided to, and briefly stored in, the diaper in response to one excretion of fecal waste are present in the diaper prior to the next excretion of fecal waste by the wearer. The diaper of Hashimoto therefore fulfills the limitations of the claim.
3. In response to the applicant's argument that Hashimoto fails to disclose the composition being attached to (i.e. in contact with) the leg cuffs, it is noted that the leg cuffs of the diaper contact the composition during the process of washing, when the composition is briefly stored in the diaper, as disclosed in column 3, lines 36-40.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28-32, 58, and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297).

6. Hashimoto discloses all aspects of the claimed invention with the exception of the waste contamination area and mass values. Hashimoto discloses a disposable article, as shown in figure 8, comprising a responsive system including a sensor 109 that detects an input when fecal waste is excreted and an actuator 108b that delivers a composition when the sensor detects an input, as disclosed in column 3, lines 42-60. Hashimoto further discloses a method of enhancing removability of waste by providing and using the article, as disclosed in column 2, lines 1-12. The composition is stored within, and in contact with, the diaper during the washing of the wearer of the diaper. The diaper comprises a topsheet 122 and leg cuffs 121a, as shown in figures 5 and 7, which contact the composition during the process of washing, as disclosed in column 3, lines 36-40, and therefore hold the composition storage.

7. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the composition of Hashimoto with a Waste Contamination Area of less than 15 cm² and a Waste Contamination Mass of less than 14 mass units, since it has been held that where the general conditions of the claim are disclosed in the prior art (i.e. the desire to enhance the removability of and to remove fecal waste), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claims 34-37, 40-44, 47-48, and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297) in view of Jones et al. (5,482,714).

9. Hashimoto discloses all aspects of the claimed invention with the exception of the composition comprising a feces modifying agent, a skin care composition, and a thickener. The composition of Hashimoto is provided to cleanse fecal waste from the wearer of the article, as disclosed in column 3, lines 54-60.

10. Jones teaches a composition for cleansing skin that has contacted fecal waste, the composition comprising a silicone oil (see column 4, lines 35-44), Al_2O_3 (see column 3, line 26), and a thickener (see column 3, lines 13-14). The composition provides a skin care benefit and protects the skin from irritation caused by fecal waste, as disclosed in column 1, lines 49-56.

11. It would therefore be obvious to one of ordinary skill in the art at the time of invention to include a skin care composition in the cleansing composition of Hashimoto, as taught by Jones, to protect the skin from irritation by fecal waste.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3761

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cla
/L. A./
Examiner, Art Unit 3761
/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761